Third UK and Ireland Mental Diversity Law Conference
Date: Thursday 6th and Friday 7th July 2023
Venue: Trent Building, University Park Campus, Nottingham NG7 2RD

Programme, abstract and biography booklet

Programme	
Thursday 6th July 2023	
9.00 – 10.00	Registration & Refreshments (Foyer)
10.00 – 10.30	Welcomes
10.30 – 12.00	**Plenary session (Senate Chamber)** **Chair:** TBC **Mental health law and the digital society** - Dr Piers Gooding, University of Melbourne - Dr Stefan Rennick-Egglestone, Institute for Mental Health, Nottingham
12.00-13.00	Lunch
13.00 – 14.30	**Parallel session 1** **Maximising autonomy- Reducing coercion** **Chair**: Jill Stavert **Room** LG6 **Speakers**: - Jill Stavert What the international human rights treaties actually require of us - Piers Gooding International evidence on what works to reduce coercion - Graham Morgan Culture and service change – what needs to happen to reduce the need for coercion - Alex Ruck Keene Approaching the reduction of coercion in England/Wales - Colin McKay Strengthening safeguards against coercive practice in the Scottish Mental Health Law Review **Making decisions for disabled adults 1** **Chair**: Amanda Keeling **Room** LG9 **Speakers**: - Kevin de Sabbata Rethinking autonomy by looking at advance decisions in dementia care

	• Judy Laing Uncovering 'tiers of invisibility' in best interest's decision making in the courts **Co-producing research** **Chair**: Caroline Fox **Room** LG11 **Speakers**: • Rosie Harding and Andrew Lee Co-producing accessible legal information: why and how? • Darius Whelan Utilisation of engaged research in mental health law: development of a mental health law toolkit • Chris Maylea What do mental health consumers want from their lawyers?
14.30 – 15.00	Refreshments
15.00 – 17.30	**Plenary session (Senate Chamber)** **Chair:** Professor Oliver Lewis **Why haven't we transformed care yet?** • Alexis Quinn, Reducing Restraint Network • Simone Aspis, Inclusion London • Professor Jill Stavert, Edinburgh Napier University • Rebecca Ince, University of Birmingham
Approx. 18.15 onwards	**Conference evening meal** – Senate Chamber, Trent Building (included in the delegate fee)
Friday 7th July 2023	
9.30 – 11.00	**Parallel session 2** **Reducing compulsion in mental health care 1** **Chair**: Danielle Watson **Room** LG6 **Speakers**: • Amy Zarins Reducing compulsion in mental health care: A systematic review of legal, ethical and practical approaches and future empirical work • Arun Chopra How long should initial detention periods for involuntary treatment last?: An analysis of Short Term Detention Certificate **Making decisions for disabled adults 2** **Chair**: Grace Carter **Room** LG9 **Speakers**: • Shannon Farrelly-Treanor Considering wishes and feelings of adults with learning disabilities in the Court of Protection • Peter Bartlett

	Relearning Old Lessons and the Voice of Experience: What the Mental Capacity Act tells us about the possibilities for the CRPD - Afiya France Promoting capacity rights of people with mental disabilities: Investigating the genealogies of present-day capacity laws in Ireland and Trinidad and Tobago **Disabled people and the criminal justice system 1** **Chair**: Chloe Holloway-George **Room** LG11 **Speakers**: - Jane Richards Autonomy, capacity and mentally impaired defendants: equality in the context of criminal justice - Eilís Ní Chaoimh Intention, Neurodivergent Thinking and Criminal Responsibility: Mens Rea as Alternative to Capacity-based Defences
11.00 – 11.30	Refreshments (foyer)
11.30 – 13.00	**Parallel session 3** **Making decisions for disabled people 3** **Chair**: Jill Stavert **Room** LG6 **Speakers**: - Danielle Watson Alter(native) Consent: Considerations of Capacity-Based Decision-Making for Dissociative Identity Disorder - Alex Ruck-Keene Sexual decision-making capacity and the courts: making the best of an impossible job? - Eliza Varney Re-examining the 'Signature Rule' in English Contract Law in light of the UN Convention on the Rights of Persons with Disabilities – Time to escape the World of 'Make-Believe'? **Disabled people and the criminal justice system 2** **Chair**: Lucy Series **Room** LG9 **Speakers**: - Claire Hogg Insanity, Capacity, and CRPD Compliance: Lessons from Keal [2022] - Matthew McCallion Confessions and echolalia: A neurodiversity-based comparison of cases involving the use of statements made by autistic defendants experiencing echolalia as evidence of admission of guilt **Reducing compulsion in mental healthcare 2**

	Chair: Peter Bartlett **Room** LG11 **Speakers**: - Tim Calton Universal Basic Income - the next generation psychotropic agent? - Magdalena Furgalska The potential of the capabilities approach to address barriers to help-seeking: analysis of mental health laws.
13.00 – 14.00	Lunch (foyer)
14.00 – 15.00	**Parallel session 4** **Helping young people who have mental health needs** **Chair**: Tim Calton **Room** LG9 **Speakers**: - Xinyu Xu Managing student mental health crisis in HEI: A case study of Chinese depression screening policy - Martha Scanlon Best interests in the realm of risk: the when, why, and how of best interests in inpatient adolescent mental healthcare in England **Protecting the rights of disabled people around the world** **Chair**: Afiya France **Room** LG11 **Speakers**: - Benoit Eyraud Societal adaptation to the recognition of fundamental human rights: The example of systematic legal control of civil commitment - Pablo Marshall Assisting and supporting the vote of people with disabilities: experience from Latin American reforms - Charles O'Mahony Recognition of Legal Capacity Delayed | Reform of Mental Capacity Law in Ireland & Northern Ireland
15.00– 15.30	Refreshments (foyer)
15.30 – 17.30	**Plenary session (Senate Chamber)** **Chair:** TBC **Healing Houses: An interactive session on alternatives to mental health coercion** - Caroline Fox, University of Nottingham This will be followed by a research priority setting exercise for our community led by Nell Munro, University of Nottingham
17.30 (approx.)	Conference close

Plenary session biographies and parallel session abstracts (in order of the programme)

Thursday 6th July

Plenary session biographies
10.30 – 12.00

Mental health law and the digital society

Chair – TBC

Dr Piers Gooding, University of Melbourne

Biography: Dr Piers Gooding is a Senior Research Fellow at the University of Melbourne Law School. He is a socio-legal researcher who investigates disability and mental health-related law and policy. Piers is the author of A New Era for Mental Health Law and Policy: Supported Decision Making and the Convention on the Rights of Persons with Disabilities (2017) with Cambridge University Press and serves on the editorial board of the International Journal for Mental Health and Capacity Law and the International Journal of Disability and Social Justice. Piers has acted as a board member and advisor in a range of local, national and international bodies working on the rights of disabled people and has advised policy-makers at national and international levels. Among others, he has collaborated with the UN Special Rapporteur for the Rights of People with Disabilities, the UN Special Rapporteur on the right to physical and mental health, and the World Psychiatric Association.

Dr Stefan Rennick-Egglestone, Institute for Mental Health, Nottingham

Biography Dr Stefan Rennick-Egglestone is a Senior Research Fellow working in the School of Health Sciences at the University of Nottingham and associated with the Institute of Mental Health and School of Education. Much of his research has focused on the design and evaluation digital healthcare technologies that maximise benefit and minimise harm by being sensitive to the needs of their users. He has been the co-ordinator for the Narrative Experiences Online (NEON) study for six years, which is examining whether access to a large collection of real (e.g. non-fictional) digital narratives describing personal experiences of mental health problems and of recovery can help others. His work on NEON has included a detailed examination of the uses and misuses of lived experience narratives, and of the ethical and legal issues inherent in working with them safely. He is now involved in broader attempts to integrate digital narratives into healthcare practices, including with young people, and with people experiencing dementia.

Parallel session 1 abstracts
13.00 – 14.30

Title of talk: Maximising autonomy- Reducing coercion
Chair: Jill Stavert
Room LG6

Session abstract overview
Maximising individual autonomy has been an objective of mental health and capacity law, policy and practice in many jurisdictions for several decades. However, the CRPD has given greater emphasis to this, notably in relation to the use of detention and other non-consensual measures (coercion). The

UN Special Rapporteur on the Right to Health, Professor Dainius Pūras, called for a reduction in psychiatric coercion involving the development of frameworks which ensure this and “a well-stocked basket of non-coercive alternatives in practice” (UN, 2017). The CRPD Committee has called for the abolition of laws authorising coercion and alternatives to be provided (CRPD Committee, 2014, 2015) which is reflected in WHO Quality Rights guidance. The World Psychiatric Association has also developed an initiative that encompasses the need to provide alternatives to coercion.

Various jurisdictions, including across the UK and Victoria (Australia), have recently addressed the need to reduce or eliminate or reduce coercion in recent legislative and policy reviews and/or reform.

More research and evaluation of the structures promoting and ensuring and alternatives to coercion is, however, required. This session will take stock of where we are and what might be taken forward to achieve maximising of autonomy through the reduction of coercion.

Professor Jill Stavert, Edinburgh Napier University
Title of talk: What the international human rights treaties actually require of us

Abstract: Across the world mental health and capacity law is often justified on the basis of protecting persons with mental disabilities and wider public safety. In some cases, the use of such laws is rising (Sheridan Rains et al, 2019) and it is becoming increasingly clear that even so-called 'human rights-based' mental health and capacity laws may not be effective and non-discriminatory (Scott Review, 2022).

This begs the question of what exactly is meant by ‘human rights-based approaches’ which is brought into particularly sharp relief when it comes to maximising autonomy through reducing or eliminating coercion. International human rights treaties do not, however, necessarily offer a uniform approach. Different constitutional approaches to such treaties within countries also impact on the national enforceability of treaty requirements. This paper will discuss these challenges and options that are available to states wishing giving effect to their treaty obligations.

Dr Piers Gooding, University of Melbourne
Title of talk: International evidence on what works to reduce coercion

Abstract: This presentation will focus on the distinction in international human rights law between the protection and promotion of human rights. It will explore the literature on promoting human rights in mental healthcare in ways that try to avoid what has been termed the ‘Geneva impasse’ between those who argue that compulsory care and treatment can never comply with human rights law and those who argue that they can if certain conditions are met. This impasse, it will be argued, has emerged from the focus on protecting the rights to liberty and equality before the law for people with psychosocial disabilities and mental health conditions that has dominated public debate in recent years. Yet, the nascent literature on promoting human rights in mental healthcare could mark a way forward beyond the ‘Geneva impasse’. Research on ‘alternatives to coercion’ and legislative mechanisms to expand voluntary support and wind down certain involuntary interventions will be discussed.

Graham Morgan MBE, Mental Welfare Commission for Scotland
Title of talk: Culture and service change – what needs to happen to reduce the need for coercion

Abstract Graham Morgan will draw on his experience as Joint Vice Chair of the Scott Review and lead for the chapter on reducing coercion in its final report, as well as his experience in collective advocacy and as an engagement officer with the Mental Welfare Commission for Scotland to look at cultural issues such as a sense of belonging or the attitudes of practitioners which may reduce the use of coercion. He will also look at possible changes in service provision which may also reduce the use of coercion. This will include changes and increase in community mental health service provision and more general community services as well as looking at possible changes within the hospital environment and will draw on the international conversations he and other members of the Scott Review held on this subject.

Alex Ruck Keene KC (Hon), 39 Essex Chambers, London
Title of talk: Approaching the reduction of coercion in England/Wales

Abstract Alex Ruck Keene will give an overview of developments in England & Wales, including the background to and the passage of the Mental Health Units (Use of Force) Act 2018 ('Seni's Law'), the work and impact of the independent Review of the Mental Health Act 1983, and the tangled saga around deprivation of liberty in the context of those with impaired decision-making capacity, asking in the latter regard whether the 2014 decision of the UK Supreme Court in a case commonly known as Cheshire West represented a Pyrrhic victory for human rights. Drawing on his experiences as a practising lawyer, a policy-maker and an academic, Alex will also reflect on how the CRPD has (or has not) influenced developments in England & Wales.

Professor Colin McKay, Edinburgh Napier University
Title of talk: Strengthening safeguards against coercive practice in the Scottish Mental Health Law Review

Abstract The Scottish Mental Health Law Review recommended that reduction of coercion should become a national priority in mental health services. That requires a shift in the culture and shape of services, but the Review also recommended a significant strengthening of legal safeguards in mental health and capacity law. Professor McKay will outline the proposed law reforms, including new safeguards for restraint, seclusion and isolation; greater weight given to advance choices and contemporaneous autonomous decisions by the patient; greater consistency in safeguards in mental health and incapacity law; and a new appeal right to the Mental Health Tribunal against an unnecessary degree of restriction. The presentation will discuss how far these reforms address international human rights norms, and how they compare with reforms underway in other parts of the British Isles.

Making decisions for disabled adults 1

Chair: Amanda Keeling
Room LG9

- Kevin de Sabbata

Title of talk: Rethinking autonomy by looking at advance decisions in dementia care

Abstract
Should an advance decision (AD) refusing life-saving treatment in case of dementia be respected even when their author, once developed the condition, seems happy to continue to live? To this question Dworkin, famously replies that the AD should prevail. Dresser and Jaworska, criticise this position, observing that allowing someone with no experience of the condition to dictate their views to their self with dementia is paternalistic.
The latter position appears more in line with the rights of people with dementia and the UN Convention on the Rights of Persons with Disabilities (CRPD). However, such a view has not been fully embraced by the law, healthcare professionals and common people. A main reason is that it requires to question assumptions at the basis of our approach to the law, autonomy and society.
This paper shows how adopting a 'dementia friendly' and CRPD compliant approach to ADs leads to a more lucid view of the individual in general. In doing this, it refers to a number of theories of personhood and autonomy, discussing undertheorised links between the different accounts and contributing to the reflection on the relationship between autonomy and external influences and on concepts like capacity and authenticity.

- Judy Laing

Title of talk: Uncovering ‘tiers of invisibility’ in best interest’s decision making in the courts

Abstract
This paper will present the approach and emerging empirical findings of the law workstream of the Wellcome Trust funded BABEL (Balancing Best Interests in Healthcare Ethics and Law) project. The team at the University of Bristol Law School have conducted empirical research in the form of in-depth semi-structured interviews with a range of actors in the legal arena of best interests decision making and, drawing on the work of Montgomery et al (2014), used a hidden law making framework to try to peel back the 'tiers of invisibility' in best interests decision making in the courts. The research has attempted to reveal the complex network of 'intermediate law makers', influences and 'hidden' factors at play in the process of best interests decision making both inside and outside the courtroom which, as Montgomery et al argue, raise questions about the constitutional legitimacy of judicial law-making in this context.

Co-producing research
Chair: Caroline Fox
Room LG11

- Rosie Harding and Andrew Lee

Title of talk: Co-producing accessible legal information: why and how?

Abstract
In this talk, we introduce a new collaborative project to co-produce accessible legal information. Having information available in an accessible format is a right protected by the UN Convention on the Rights of Persons with Disabilities (Article 9, Article 21), and an anticipatory duty for all service providers under the Equality Act 2010. Additional accessible information duties are imposed on health and social care providers through the Accessible Information Standard (2016), and on public sector services through the EU Web Accessibility Directive. As was seen clearly during the lockdowns and ever-changing regulatory context of the pandemic, too often information that is important to the physical, mental, financial and legal wellbeing of people is not communicated in accessible ways. Our co-production research (funded by the University of Birmingham) looks at legal information and seeks to identify priorities for accessible legal information. We will develop a toolkit for co-production of accessible information in legal contexts, and work together to develop accessible legal resources. In the talk, we explain why we are interested in making legal information more accessible, and discuss our practical plans for doing so, alongside exploring the legal background to accessible information, and some of the challenges that developing accessible legal information presents.

- Darius Whelan

Title of talk: Utilisation of engaged research in mental health law: development of a mental health law toolkit

Abstract
Non-governmental organisations have made important contributions to the development of mental health law and it is valuable for academic researchers to collaborate with NGOs on research projects, in a form of Engaged Research. This paper considers the meaning of Engaged Research and describes its utilisation in the development of a Mental Health Law Toolkit, an information resource published online. The researchers collaborated with a mental health NGO in Ireland, Mental Health Reform, to design the project and co-produce the Mental Health Act 2001 toolkit. The paper explains the process and reports on themes which emerged from consultation meetings with stakeholders, including persons with lived experience of mental health difficulty and their supporters. Examples of changes in the toolkit which resulted from these consultation meetings are highlighted. The paper critically evaluates the process and suggests that the process may be used as a template for development of similar toolkits in other jurisdictions.
Authors: Darius Whelan and Claire Carroll

- Chris Maylea

What do mental health consumers want from their lawyers?

Abstract: This paper presents the findings from two coproduced Australian projects where people with experiences of poor mental health, mental distress and/or suicidality were asked what they wanted from their lawyers. One project, in Victoria, Australia, designed a model of service for delivering mental health tribunal legal services. The other consulted across Australia to develop a training package for lawyers in crime, family and civil justice jurisdictions. Both projects also consulted with carers, family and supporters, clinicians, lawyers, policy-makers and regulators.
This presentation highlights the key themes and tensions, including different perspectives from different stakeholder groups. In general, people using legal services and lawyers focused on outcomes, with process being a secondary consideration. Clinicians and policymakers were more focused on having good, trauma-informed processes and practices in place. Carers, family and supporters highlighted how they were excluded when information sharing was perceived to be limited by lawyer's ethical obligations.
The paper presents codesigned principles for consumer-led lawyering and a model of trauma-informed and rights-based lawyering, which brings together the different perspectives and provides a resolution to some of the key tensions. Other tensions, such as systemic barriers, remain unresolved and will require reforms to systems and structures outside of legal practice.

Plenary session biographies

15.00 – 17.30

Why haven't we transformed care yet?

Chair – Oliver Lewis, Barrister, Doughty Street Chambers, London

Oliver Lewis is a barrister at Doughty Street Chambers, London. He specialises in the human rights of disabled people, in particular autistic people and people with learning disabilities.

Alexis Quinn, Reducing Restraint Network

Biography: A schoolteacher of over ten years, former professional athlete and now author of two books: her ground-breaking memoir, Unbroken, and Autistic and Expecting, a guide for autistic parents to be. Alexis is an activist with Rightfullives, Manager at the Restraint Reduction Network and is studying an MSc in Psychotherapy at University of Greenwich.

Simone Aspis, Free Our People Now Project Manager, Inclusion London

Biography: Simone joined Inclusion London in 2022 with 25 years' experience of campaigning with and for disabled peoples' human and civil rights working with a broad range of disabled people's organisations including UK Disabled Peoples Council. Alliance for Inclusive Education and People First.
She ran a successful campaign included securing people with learning difficulties inclusion in the Disability Discrimination Act and Direct Payments legislation and strengthening disabled people's rights to inclusive education in the Children and Families, Equality and Apprenticeships legislation.
Her interests include the institutionalisation and deinstitutionalisation of people with learning difficulties and autistic people, and topical medical ethics issues.
Simone has been an IPSEA tribunal appeals advocate for disabled children and young people wanting to attend mainstream schools. In her role she would use the law to challenge Local Authorities decisions to send disabled children and young people to special schools. She then moved into Free Our People Now advocacy work assisting some Autistic people and people with learning difficulties who want to get out of psychiatric system.

Simone also has a Graduate Diploma in Law and a MA Degree in Ethics and Law in Healthcare Practice. Her dissertation 'The Concept of Best Interests (used in medical treatment decisions regarding incompetent individuals) is both ill-conceived and in certain cases inappropriately applied." This project examines how "best interests" concept is applied in deciding whether to treat patients lacking capacity.
simone.aspis@inclusionlondon.org.uk

Jill Stavert, Edinburgh Napier University

Biography: Jill is Professor of Mental Health and Capacity Law at Edinburgh Napier University where she is Director of the Centre for Mental Health and Capacity Law and leads the Centre for Mental Health Practice Policy and Law Research. Her areas of research and expertise are international, European and national human rights and mental health and mental capacity law and related law, policy and practice review and reform. She was a member of the Executive Team of Scottish Mental Health Law Review (Scott Review) which reported in September 2022.
Jill's recent work has also included leading a Nuffield Foundation funded study on views and experiences of the Mental Health Tribunal for Scotland, advising on the impact of COVID-19 and related restrictions on law, policy and practice relating to persons with mental disabilities, and being an expert advisor to the Scottish Independent Review of Learning Disability and Autism in the Mental Health Act and a member of the Deprivation of Liberty and Supported Decision-Making Working Groups in the Scottish Government review of the Adults with Incapacity (Scotland) Act**.**

Rebecca Ince, Birmingham University

Biography: Becky is a Research Fellow at the University of Birmingham, her research predominantly investigates people's experiences of complex health and social care pathways. This includes those experiencing mental health difficulties, people with learning disabilities and/or autism, older people in residential care and carers.

Friday 7th July

Parallel session 2 abstracts
9.30 – 11.00

Reducing compulsion in mental health care 1
Chair: Danielle Watson
Room LG6

- Amy Zarins

Title of talk: Reducing compulsion in mental health care: A systematic review of legal, ethical and practical approaches and future empirical work

Abstract: The use of compulsion in mental health care has received growing attention in recent years, with increasing calls for the use of alternatives and less restrictive practices. This has prompted legal reforms worldwide, the objective being to reduce non-consensual treatment. Despite this, the practicality of reducing compulsory measures has received criticism from scholars and stakeholders alike, sparking the question to what extent should or could non-consensual intervention be reduced.

This ongoing systematic review seeks to provide a comprehensive and unbiased account of key approaches implemented in law, policy and clinical practice, in light of ethical perspectives. Firstly, it

identifies and evaluates approaches that claim to reduce compulsory measures across law, ethics and practice. Secondly, it gives weight to how these approaches are evidenced and challenged in the literature. This presentation will discuss the findings from this project so far, as well as introduce plans for a Delphi study, which aims to build on this research and investigate how these approaches would apply to complex clinical scenarios by seeking consensus between experts."

- Arun Chopra

Title of talk: How long should initial detention periods for involuntary treatment last?: An analysis of Short Term Detention Certificate

Abstract: The Mental Health Act in Scotland is under review. We explored length, mode of ending and factors of influence on the application of short-term detention certificates (STDCs) that are used for involuntary treatment in Scotland and that can last up to 28 days, between 2006 and 2018. We use the information to raise the question as to whether this 28 day time frame for initial treatment detentions should be revisited in the current review.

Making decisions for disabled adults 2
Chair: Grace Carter
Room LG9

- Shannon Farrelly-Treanor

Title of talk: Considering wishes and feelings of adults with learning disabilities in the Court of Protection

Abstract: The Mental Capacity Act 2005 (“MCA”) was presented as legislation which both protects and empowers people who lack capacity to make their own decisions. One way the MCA empowers these individuals is through the consideration of the individual’s wishes and feelings under s.4(6) of the MCA, as this allows their voice to be heard by healthcare professionals. Whilst concerns have been raised about the implementation of s.4(6) in practice (House of Lords Select Committee on the MCA, 2014; Law Commission, 2017), there have been notable examples of the Court of Protection (“CoP”) giving the wishes and feelings of the individual considerable weight e.g. Wye Valley NHS Trust v Mr B [2015] EWCOP 60 and Briggs v Briggs [2016] EWCOP 53. However, regarding adults with learning disabilities, the CoP often makes decisions which go against their wishes and feelings (Series, 2016). This raises questions as to the weight that is being afforded by the CoP to the wishes and feelings within this demographic. This presentation will therefore consider how the CoP has applied s.4(6) in the context of adults with learning disabilities, particularly in relation to medical decisions.

- Peter Bartlett

Title of talk: Relearning Old Lessons and the Voice of Experience: What the Mental Capacity Act tells us about the possibilities for the CRPD

Abstract: It is now more than thirty years since the Law Commission commenced its ground-breaking work on adult mental capacity law, and fifteen years since the new Act was implemented. An assessment of the experience of that serves as a salient reminder that the early issues of socio-legal studies have not gone away. More to the point, it shows the possibilities and limitations of what we can hope for in implementation of the Convention on the Rights of Persons with Disabilities (CRPD). Some of the lessons from experience are discussed in this paper. These include –

• At issue in the CRPD are rights, and disputes about them have to be subject to judicial scrutiny. Courts behave like courts, and that means certain forms of evidence and procedural structures. That raises a range of issues well-known to the early researchers in socio-legal studies:
o The processes are fundamentally alienating of litigants. This was argued mainly as regards poor litigants in the law and society movement, but the problem is at least as pronounced regarding litigants with mental disabilities.
o These take time: to work effectively, the factual situation has to be constant enough that evidence

can be gathered, processes happen, and a judgment reached and implemented. That can take months, creating real problems for any system that claims to be 'decision and time specific'
o They are expensive: as we see the collapse of legal aid, who is going to pay for this?

• Administrative officials, be they lawyers, court 'experts', social workers, doctors or other officials, are active participants in the implementation of any legislative framework. They are not going to go away. Their involvement brings both positive and negative influences, but what we have learned about administrative structures and governance will continue to be relevant. In particular, a 'paradigm shift' will require that we bring the administrative officials along with us, and that will not necessarily be easy.

- Afiya France

Title of talk: Promoting capacity rights of people with mental disabilities: Investigating the genealogies of present-day capacity laws in Ireland and Trinidad and Tobago

Abstract: The lives of persons with mental disabilities (also called "PWMD) are very affected by whether or not they are allowed to manage their property and affairs, and make choices about their own lives. The term in law that covers this is called "legal capacity".

Article 12 of the Convention on the Rights of Persons with Disabilities 2006 (also called "CRPD") says that PWMD have the same right to legal capacity as everyone else. It also says that they should be supported to use their legal capacity, and that their will and preference should be respected. Since the CRPD has been passed, some countries, like Ireland, have changed their laws to try to follow the CRPD while other countries, like Trinidad and Tobago (TT), have left old laws in place that assume that PWMD have no legal capacity.

My research looks as how and why it came to be that Ireland has tried to change its laws to recognize the capacity rights of PWMD, while TT has not. I will look at the genealogies, or the histories leading to the present-day capacity laws in each country. I will do this to understand what can encourage capacity law change, and what can stop it.

Disabled people and the criminal justice system 1
Chair: Chloe Holloway-George
Room LG11

- Jane Richards

Title of talk: Autonomy, capacity and mentally impaired defendants: equality in the context of criminal justice

Abstract: The Committee on the Convention on the Rights of Person's with Disabilities (CRPD) has interpreted the right to equal legal capacity as compelling deference to a person's expressed will and preferences, including in cases where a person commits an egregious crime. On this interpretation, notwithstanding that a person's mens rea is wholly animated by mental disability, offenders must be respected as able to make autonomous decisions and so held to account on the same basis as all other offenders. It is my argument that the Committee's interpretation of legal capacity constructs a thin notion of autonomy which has the potential to prioritise a person's will and preferences over their rights and dignity. Relying on both criminal legal theory and critical disability literature, I critique the CRPD Committee's interpretation of equal legal capacity. I argue that its particular construction of autonomy reinforces the inherent structural injustice embedded within the institution of criminal justice, which situates the mentally disabled defendant as the 'other'. This paper draws out the difficulties of realising equality for defendants with mental disabilities to the extent that the Committee's interpretation of equal legal capacity operates as a call for equal rights protection within existing institutions.

- Eilís Ní Chaoimh

Title of talk: Intention, Neurodivergent Thinking and Criminal Responsibility: Mens Rea as Alternative to Capacity-based Defences

Abstract: A foundational principle of criminal law is that there is no crime without a guilty mind. Implementing this principle requires the law to achieve the impossible: to know the mind of another. To do so, criminal law has developed doctrines of mens rea that make assumptions regarding decision-making. This paper will draw out these assumptions regarding intention in Irish law. This paper will also examine the position in England and Wales and consider how it differs from Ireland.

Irish criminal law currently utilises capacity-based defences for individuals who, due to a mental disorder, are considered not to have fully intended the consequences of their actions. This approach has been criticised as negating the criminal responsibility and legal capacity of disabled people. It may therefore be contrary to the UN Convention on the Rights of Persons with Disabilities.

This paper will compare the legal understanding in the mens rea of intention of how people make decisions with psychological decision-making models, focusing on the decision-making of neurodivergent people (i.e. autistic people, people with ADHD etc.) This paper will make some preliminary suggestions regarding assessing the criminal responsibility of neurodivergent people using mens rea rather than through capacity-based defences.

Parallel session 3 abstracts
11.30 – 13.00

Making decisions for disabled people 3
Chair: Jill Stavert
Room LG6

- Danielle Watson

Title of talk: Alter(native) Consent: Considerations of Capacity-Based Decision-Making for Dissociative Identity Disorder

Abstract: Dissociative Identity Disorder (DID) affects the individual's ability to form a fully integrated personality. Instead, they will exhibit multiple separate, functionally independent personalities. Much of the legal scholarship on DID sits at the intersection of vulnerability and criminality. However, there is a lack of discourse relating to DID in alternative legal contexts. In 2000, Professor Elyn Saks provided a unique thought scenario: an individual with DID presents themselves at a hospital for care, but during treatment, a Jehovah's Witness alter switches out and refuses treatment against the known wishes of other alters. Testing this scenario against the Mental Capacity Act (MCA) 2005 demonstrates a conflict between the capacity-based law of England and Wales and the obligations of signatories to the Convention on the Rights of Persons with Disabilities (CRPD). Despite the Jehovah's Witness alter passing all MCA criteria themselves, medical professionals will often decide that the individual before them, the DID system as a whole, lacks capacity. This perspective highlights a flaw in the MCA and acts contrary to the goals of inclusion under the CRPD. This paper seeks to assess this conflict and promote the ability of individuals with DID to consent or refuse medical treatment.

- Alex Ruck-Keene

Title of talk: Sexual decision-making capacity and the courts: making the best of an impossible job?

Abstract: For nearly two decades, the courts in England & Wales have been determining questions of sexual decision-making capacity, not by reference to the question of whether a person consented to a specific encounter, but to whether the person is capable of consenting to sexual activity. In consequence, the courts have reached further and further into the bedroom, with profound implications for the rights of those with cognitive impairments to express themselves sexually. In 2021,

the question of how courts should consider the question of sexual decision-making capacity finally reached the Supreme Court in the case of A Local Authority v JB [2021] UKSC 52. In this presentation, I explore explore the clash of principles the case illuminates: between the need for sexual consent to be true consent, and the need to support the exercise of sexual expression by those with cognitive impairments. I examine, by reference to sometimes forgotten debates preceding legislation in both England & Wales and human rights arguments, why the clash is so fundamental. Recognising that, whether or not this was inevitable, the question of sexual decision-making capacity is now one in which the law asserts an interest, I set out a way in which it may be possible to approach matters which may not eliminate, but may at least mitigate, the clash of principle.

- Eliza Varney

Title of talk: Re-examining the 'Signature Rule' in English Contract Law in light of the UN Convention on the Rights of Persons with Disabilities – Time to escape the World of 'Make-Believe'?

Abstract: In the choice of values prevalent in English contract law, a focus on certainty seems to be favoured at the expense of fairness. One example that illustrates such preference is in the 'signature rule' associated with L'Estrange v Graucob, a decision adopted by the Court of Appeal almost a century ago. Parties who sign a contract are generally bound by their signature, irrespective of whether they understood the document. This artificial assumption of assent has been compared by Lord Devlin in McCutcheon v MacBrayne to a 'world of make-believe'. Yet, while the 'signature rule' may be justified in a commercial setting, it may lead to unfair outcomes in trader-consumer contracts, especially where people presented with complex standard form contracts lack time or accessible information to understand the document before signature. Reliance on the Consumer Rights Act 2015 to address such outcomes may prove insufficient, especially as not all contract terms can be challenged as 'unfair'. This paper re-examines the 'signature rule' in light of the UNCRPD, calling for an approach in consumer contracts where the incorporation of terms is conditioned on reasonable notice, interpreted to include the accessibility of terms, and focused on protecting both economic and social values.

Disabled people and the criminal justice system 2
Chair: Lucy Series
Room LG9

- Claire Hogg

Title of talk: Insanity, Capacity, and CRPD Compliance: Lessons from Keal [2022]

Abstract: In this paper, I discuss the relationship between the UN CRPD and the test for legal insanity applied in the criminal law of England and Wales. With reference to the recent case of R v Keal (2022), I argue that the M'Naghten rules as applied in England and Wales cannot be understood as a capacity standard, but rather as a defence predicated on the existence of a narrowly defined excusing condition. I argue, therefore, that CRPD non-compliance arises not because the M'Naghten rules are constructed or applied as a test for capacity, but for another reason: that they are deliberately invoked by the courts to divert defendants away from warranted acquittals on disability-neutral grounds, in the interests of retaining disposal powers that would otherwise be unavailable.

- Matthew McCallion

Title of talk: Confessions and echolalia: A neurodiversity-based comparison of cases involving the use of statements made by autistic defendants experiencing echolalia as evidence of admission of guilt

Abstract: Autistic persons sometimes experience echolalia, i.e. a (usually) involuntary verbal response to certain stimuli wherein phrases, sentences, or other sounds heard may be repeated immediately after being heard or at a later stage.

Situations may occur when autistic persons involved in potentially criminal incidents have repeated phrases, sentences, or scenarios discussed by others when questioned by the police. This is especially the case when the autistic person is experiencing a sensory overload resulting from the incident. Prosecutors have at times used these statements as admissions of guilt on the part of the autistic defendant.

This paper discusses two cases – Ackerley v A-G of the Isle of Man (Privy Council, 2013) and Commonwealth v. Rushin (Virginia Beach Circuit Court, 2019) – in which the autistic defendant's verbal statement of certain phrases was relied upon by the prosecution as admission of guilt. The paper proceeds to compare and critique these cases by drawing upon the author's ongoing PhD work on the assessment of the criminal liability of autistic defendants. It highlights developments made since these decisions, considers any lessons to be learnt by judicial actors, and suggests pathways for moving forward from the perspective of emerging theories arising from the so-called 'neurodiversity paradigm'.

Reducing compulsion in mental healthcare 2
Chair: Peter Bartlett
Room LG11

- Tim Calton

Title of talk: Universal Basic Income - the next generation psychotropic agent?

Abstract: Drawing on the 'Dialectic of Enlightenment' by the Frankfurt School Critical Theorists, Theodor Adorno and Max Horkheimer, I will argue that, despite the progress our species has achieved via Enlightened thought and practice, this attempt to fully dominate nature has culminated in the institution of a social and political order over which we have lost control, and thus the establishment of a form of reasoning and general world-view which appears to exist independently of (and is indifferent to) human beings and our suffering.

I will argue that this play of instrumental reason has, over the course of the twentieth century and to date resulted in a 'Great Disempowerment' of the suffering individual within both Psychiatry and society at large and the production of a socio-material order disfigured by massive wealth inequalities (and thus imbalanced, concentrated, and unconstrained agentic power, where the 1% exist in conditions of freedom, whilst the majority are, in terms, unfree) and an associated explosion of mental distress.

From a reading of the work of the psychiatrist/philosopher, Frantz Fanon, wherein mental illness can be understood as a 'pathology of freedom', I will argue that a psychiatrist's role should be to try and restore a sense of agency and freedom to the mentally ill person and that effective prevention of, and/or treatments for, mental illness should involve attention to, and attempt to increase (via redistribution), an individual's agentic power. That is, they should seek to redress a dominatory socio-material inequality.

By redistributing agentic power (via the provision of money in the form of a Universal Basic Income) at a societal level I will argue that we open up the possibility of reducing the severity of impact of traumas/inequalities and, by extension, the burden of mental ill health. I will summarise the extant empirical evidence underpinning the mental health effects of UBI and conclude that UBI may be the 'Next Generation's Psychotropic Agent', given it is young people whose futures have been occluded by the actions of others and thus deprived of hope.

Speaker biography: I am a Consultant Psychiatrist, currently working in Lincolnshire, who was previously a Lecturer in Psychiatry at the University of Nottingham.

- Magdalena Furgalska

Title of talk: The potential of the capabilities approach to address barriers to help-seeking: analysis of mental health laws.

Abstract: The capabilities approach offers a new, more practical way of thinking about barriers people face when experiencing mental health treatment and help-seeking. It conceptualises those barriers as "unfreedoms", which are understood as systemic and relational aspects of experiences which prevent people from having the freedom to pursue their life goals and values. The capabilities approach requires addressing these barriers by adopting a holistic approach to treatment and help-seeking, which values choice, freedom, and social justice. Using this approach, this paper analyses major concepts like mental capacity, treatment/compulsory treatment, insight, and advance directives to uncover how these are experienced as unfreedoms and how they could be reimagined to improve people's experiences when faced with mental health laws.

Parallel session 4 abstracts
14.00 – 15.00

Helping young people who have mental health needs
Chair: Tim Calton
Room LG9

- Xinyu Xu

Title of talk: Managing student mental health crisis in HEI: A case study of Chinese depression screening policy

Abstract: This paper carries out a case study of the 2020 Depression Screening Policy in China. Due to the concern of a high prevalence of depression among students, China issued a mental health policy, requiring higher education institutions (HEI) to organise massive depression screenings for students without informed consent and give 'special attention' to those who received abnormal screening results. This paper argues that this policy sees depression as a unified disease across the population needing a paternalistic management rather than a personalised and humanised healthcare. It focuses more on risk-manipulation rather than in truth improving student mental health. Despite being shocking to the world, this Chinese intervention should not be taken for granted. Due to the irrationality of unification, paternalism and non-beneficence, this intervention serves as a counter example of what the best healthcare delivery of depression ought to look like. In addition, this paper identifies a recognised similarity in the UK HEI of seeing students with depression as potential risk-carriers on campus through student mental health crisis prevention strategies. This is a warning of a shared, impoverished, dehumanised understanding of depression across jurisdictions, which over-medicalises and stigmatises depression as a risky mental illness necessarily needs to be treated medically.

- Martha Scanlon

Title of talk: Best interests in the realm of risk: the when, why, and how of best interests in inpatient adolescent mental healthcare in England

Abstract: The legal framework governing inpatient adolescent mental healthcare in England is undeniably complex, with decisions being made at the interface of three legislative frameworks: the Mental Health Act (MHA) 1983, the Mental Capacity Act (MCA) 2005 and the Children Act (CA) 1989. Although MHA detention of under-18s was historically less common, developments in the law have limited the role for parental consent to admission and treatment and the number of children and young people being detained under the MHA has also been increasing over time. Whereas the MHA detention criteria focus on nature and degree of mental disorder and risk to self or others, both the MCA and the CA centre decision-making on behalf of others around the individual's best interests. This paper seeks to examine how these concepts – including the different framings of best interests in the MCA and the CA – interact. Using qualitative data collected from twelve semi-structured interviews with health and social care practitioners involved in decision-making on admission and treatment, this paper will (i) discuss when and why best interests was relevant in practitioners' decision-making (ii)

how it was navigated and constructed, and (iii) argue that greater clarity in the law and legal guidance is needed.

Protecting the rights of disabled people around the world

Chair: Afiya France
Room LG11

- Benoit Eyraud

Title of talk: Societal adaptation to the recognition of fundamental human rights: The example of systematic legal control of civil commitment

Abstract: Each year in France, nearly 100,000 patients are hospitalized without their consent in psychiatry. They are cared for according to the regime established in 2011, following a declaration of unconstitutionality of the previous law. If the implementation of the new law on the rights and protection of persons under psychiatric care required the collaboration of a large number of actors from various professional backgrounds (judges, lawyers, psychiatrists, hospital administrative staff), it now seems almost unanimously disappointing. In this article, which is based on a survey carried out since 2021 in one of the largest French psychiatric hospitals, the authors note a tension between the ethical dimension underlying the decision of the Constitutional Council – emphasizing attention to the human rights of people suffering from mental disorders – and the difficulty, for the actors concerned by its implementation, of giving it sufficient meaning.

- Pablo Marshall

Title of talk: Assisting and supporting the vote of people with disabilities: experience from Latin American reforms

Abstract This article considers electoral law responses to the challenges posed by human rights standards regarding the right to vote for people with disabilities. We argue that human rights standards, mainly since the emergence of the CRPD, demand not just the elimination of the legal exclusion of people with mental disabilities from the electoral roll and the creation of more accessible electoral environments but significant policy intervention in the exercise of the right to vote. These interventions include assistance in casting the ballot in the ballot box. Still, they may also include support for decision-making in electoral contexts associated with the idea that voting is an instance in which people with disabilities exercise a type of legal capacity. We examine law and policy responses to the Convention of the Rights of the Persons with Disabilities adoption in 6 Latin American countries, looking for clarity in applying the human rights standards. We focus on Latin America because the region has experienced a revolutionary wave of reforms in the regimes of legal capacity, implementing systems of support to exercise legal capacity for persons with disabilities. Findings indicate that despite the broad implementation of support measures for exercising legal capacity in private law, they have not been introduced in electoral law and policy. On the contrary, electoral law has been reviewed and reformed in light of CRPD focused on the enfranchisement of people with mental disabilities and the implementation of accessibility and assistance for voting. We conclude that the lack of conceptual clarity regarding the differences and relations between human rights obligations remains a crucial aspect to discuss. We claim that a correct understanding of the CRPD obligations complements voting assistance with measures of support for meaningful decision-making in all spheres of life, including the electoral domain.

- Charles O'Mahony

Title of talk: Recognition of Legal Capacity Delayed | Reform of Mental Capacity Law in Ireland & Northern Ireland

Abstract This paper examines the law on mental capacity in Ireland and in Northern Ireland. It looks at the development of the Assisted Decision-Making (Capacity) 2015 (ADMCA) and the Mental Capacity Act (Northern Ireland) 2016 (MCA NI). The ADMCA applies in the Republic of Ireland, the MCA (NI) applies to Northern Ireland. This paper considers whether the relevant legislation in Ireland and Northern Ireland complies with Article 12 of UN Convention on the Rights of Persons with

Disabilities (CRPD). The legislation enacted in Ireland has been described by some commentators as progressive, while falling short of the requirements of the CRPD. The "fusion" model of legislation adopted in Northern Ireland represents an experimental and ostensibly "radical" approach to law and policy in this area. This paper also considers whether the fusion approach brings Northern Ireland closer to compliance with Article 12 of the CRPD. The protracted delays in the commencement of both legislative regimes will be considered.

Plenary session biographies
15.30 – 17.30

Healing houses: How can we ensure therapeutic settings beyond hospital are available to people experiencing acute mental distress?

Chair – TBC

Caroline Fox, School of the Built Environment, University of Nottingham

Biography: Dr Caroline Fox Yeo has a BArch, MSc and PhD in Architecture from the University of Nottingham. She is a survivor researcher and Anne McLaren Research Fellow based at the Department of Architecture & Built Environment, Buildings, Energy & Environment Research Group. Her project Healing Houses is an investigation of the sustainability, design, opportunities and barriers facing Soteria house and peer respite development globally.

This will be followed by a research priority setting exercise for our community led by Nell Munro, University of Nottingham